NO. 84716-9

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Petitioner,

v.

LESTER RAY JIM,

Respondent.

SUPPLEMENTAL BRIEF OF PETITIONER STATE OF WASHINGTON

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I. INTRODUCTION

At issue here is the scope of Washington State's assumption of criminal jurisdiction over Indians within Indian country in RCW 37.12.010. Historically, states had no jurisdiction over Indian crimes within Indian country. In 1953, Congress changed the jurisdictional landscape. It provided five states with criminal and civil jurisdiction over Indians acting within Indian country, and authorized other states (including Washington) to enact laws asserting such jurisdiction. *See* Pub. L. 83-280, 67 Stat. 588 (1953) (generally referred to as Public Law 280). In response to Public Law 280, Washington's Legislature enacted RCW 37.12.010, asserting nonconsensual criminal jurisdiction over Indians in most of Indian country.[1] However, on "tribal lands" or "allotted lands" that are located "within an established Indian reservation and held in trust by the United States or subject to a restriction against alienation imposed by the United States," Washington limited its assertion of nonconsensual jurisdiction to eight enumerated areas not applicable here. *Id.* This reflected a State policy choice to refrain from asserting nonconsensual jurisdiction on those lands within a tribe's reservation where the tribe would likely be able and willing to assert

[1] The statute is attached as Appendix 1.

jurisdiction over the activities of its own member Indians.

The issue before this Court is a matter of State statutory interpretation. Is the Maryhill Treaty Fishing Access Site — providing multiple tribes with access to off-reservation fishing grounds — the type of landholding within Indian country that Washington's Legislature exempted from the State's jurisdiction in RCW 37.12.010? This Court should hold that the State has jurisdiction over Indian criminal activity within the Maryhill site because it is not trust or allotted land within any established Indian reservation.

II. STATEMENT OF THE ISSUES

1. Do off-reservation treaty fishing access sites held in fee by the United States for the use of four tribes constitute an "established Indian reservation" held in trust or restricted from alienation so as to preclude State criminal jurisdiction over Indians under RCW 37.12.010?

2. To the extent *State v. Sohappy*, 110 Wn.2d 907, 757 P.2d 509 (1988), holds that a tribal fishing site managed by the United States for the use of multiple tribes constitutes an "established Indian reservation" for purposes of RCW 37.12.010, should it be overruled?

III. STATEMENT OF THE CASE

Mr. Jim is an enrolled member of the Yakama Nation. He was

cited for criminal activity[2] on federally owned land along the Columbia River known as the Maryhill Treaty Fishing Access Site (the "Maryhill TFAS"), one of several such sites along the banks of the Columbia River. Congress directed the Corps of Engineers to develop and improve these fishing access sites to replace *off-reservation* fishing locations along the shore of the Columbia River that were submerged by reservoirs behind several dams on the Columbia River. *See* Pub. L. No. 100-581, § 401(a), 102 Stat. 2938, 2944 (1988). Once improved, the legislation directs the Corps of Engineers to transfer fishing sites to the Bureau of Indian Affairs (BIA) for continued maintenance. *Id.* Unlike other federal legislation authorizing lands to be acquired for tribal purposes,[3] Congress did not direct that these sites be placed in trust for any tribe, nor have any sites been designated a part of any established Indian reservation of any of the four tribes authorized to use these sites to access their off-reservation

[2] The nature of the criminal charge is irrelevant to the jurisdictional question before the Court — the question of criminal jurisdiction under RCW 37.12.010 is analytically the same whether the criminal charge involved is a property crime, an assault, or a drug crime. In this case, the charge involved a criminal violation of fishing laws, but it is not a fishing rights case. While Mr. Jim alleged that he was exercising a treaty right and that the State was preempted from regulating that activity, this argument is only properly asserted as an affirmative defense to state criminal charges, and would be considered during a trial on the merits. *State v. Petit*, 88 Wn.2d 267, 269-70, 558 P.2d 796 (1977). Nevertheless, the issue of state preemption was briefed more fully in the State's Amended Response Brief, pp. 5-11, to address arguments Mr. Jim raised.

[3] *See, e.g.,* Pub. L. No. 80-247, 61 Stat. 466 (1947), authorizing acquisition of Celilo Falls to be held in trust for the Indians occupying that site.

fishing grounds.[4]

The Klickitat County District Court dismissed the State's criminal charges, finding that the State lacked criminal jurisdiction over Mr. Jim when he was on the Maryhill TFAS. The superior court reversed and reinstated the charges, finding that the State did have criminal jurisdiction over Mr. Jim pursuant to RCW 37.12.010. The Court of Appeals reversed the superior court and reinstated the district court's dismissal, relying entirely upon *State v. Sohappy*, 110 Wn.2d 907, 757 P.2d 509 (1988), a case concluding that Cooks Landing, an "in-lieu" fishing site, is a "reservation" for purposes of RCW 37.12.010. *See State v. Jim*, 156 Wn. App. 39, 43, 230 P.3d 1080 (2010). The Court of Appeals' opinion did not address the provisions of RCW 37.12.010 that define the scope of and limits on the State's assumption of criminal jurisdiction on Indian reservations.

IV. ARGUMENT

This case involves the proper interpretation and application of RCW 37.12.010, Washington State's assertion of nonconsensual criminal jurisdiction over Indians within Indian country. Specifically, this Court

[4] Background information about the development of Columbia River Treaty Fishing Access Sites is available on the U.S. Army Corps of Engineers website, *http://www.nwp.usace.army.mil/tribal/home.asp*, and the Columbia River Intertribal Fish Commission website, *http://www.critfc.org/text/inlieu.html*. (Internet sites last visited Feb. 1, 2011.)

must determine whether the Maryhill TFAS constitutes a portion of a reservation over which the State statutorily limited its assumption of criminal jurisdiction.

The Maryhill TFAS lies many miles away from the reservations established for the four tribes that utilize this site. It was developed to replace inundated off-reservation lands that these tribes use to access the Columbia River for off-reservation treaty fishing activities. Because this land is not the "established Indian reservation" of any of these tribes, and because it was not acquired with direction that it be placed in trust for any tribe or as restricted allotted land for any individual Indian, the limit on the State's assertion of nonconsensual jurisdiction over Indian country set forth in RCW 37.12.010 does not apply.

A. Pursuant To Federal Law, RCW 37.12.010 Asserts Washington State's Jurisdiction Over Indians Within Indian Country

Prior to 1953, states generally had no criminal jurisdiction over Indians engaged in unlawful activity within Indian country. *Washington v. Confederated Bands & Tribes of the Yakima Indian Nation*, 439 U.S. 463, 470, 99 S. Ct. 740, 58 L. Ed. 2d 740 (1979). Only federal or tribal laws governed criminal conduct by Indians within Indian country. *Id. See also Arquette v. Schneckloth,* 56 Wn.2d 178, 179-83, 351 P.2d 921 (1960) (discussing the State's jurisdictional limits prior to PL 280). Congress

changed this jurisdictional landscape in 1953 when it enacted Public Law 280,[5] which immediately ceded to five states full civil and criminal jurisdiction over Indian country, and which provided the remaining states authority to assume such jurisdiction without the need for any consultation or consent by affected tribes.

In 1957, Washington State accepted the authority conveyed by PL 280 and enacted Laws of 1957, ch. 240, to assume criminal and civil jurisdiction in Indian country, when requested by the governing tribe. Laws of 1957, ch. 240, § 2.

In 1963, the Washington Legislature expanded the State's jurisdiction by asserting jurisdiction over all of Indian country regardless of whether such jurisdiction was requested by a tribe. Laws of 1963, ch. 36 (codified at RCW 37.12). However, the Legislature established certain geographic limitations, extending full civil and criminal jurisdiction to all Indian country within the State except "tribal lands" or "allotted lands" that are located "within an established Indian reservation and held in trust by the United States or subject to a restriction against alienation imposed by the United States . . . ." RCW 37.12.010. State assumption of jurisdiction within these identified portions of an

[5] Public Law No. 83-280, 67 Stat. 588 (1953); codified as amended at 18 U.S.C. § 1162, 25 U.S.C. §§ 1321-1326, and 28 U.S.C. § 1360 (commonly referred to as "Public Law 280" or "PL 280").

established Indian reservation arises only when requested by a tribe, or when the matter at issue relates to one of eight enumerated topics.[6] *Id.* The 1963 legislation allowed any tribe in Washington to request that the State exercise full jurisdiction over all lands within its reservation. *See* RCW 37.12.021.

As explained in *Confederated Tribes & Bands*, 439 U.S. at 502, this exception to the State's asserted jurisdiction is a reasoned legislative decision "allowing scope for tribal self-government on trust or restricted lands" within a tribe's established reservation. The Legislature established a jurisdictional exception for locations where a tribe would likely be prepared to assert jurisdiction over the actions of tribal member Indians.[7]

B. RCW 37.12.010 Provides Unambiguous Criteria Identifying the Lands Excluded From State Jurisdiction, None Of Which Apply To The Maryhill Treaty Fishing Access Site

The jurisdictional exception in RCW 37.12.010 can be re-stated as follows: With limited exceptions not present here,[8] nonconsensual State jurisdiction has not been asserted over Indians when they act:

(1) "within an established Indian reservation"; *and*

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[6] The State retains full jurisdiction over the areas of compulsory school attendance, public assistance, domestic relations, mental illness, juvenile delinquency, adoption proceedings, dependent children, and motor vehicles regardless of whether those matters arose on the lands otherwise excepted from other the State's unilateral assumption of jurisdiction. *See* RCW 37.12.010. None of those subjects is at issue in this case.

[7] Even in these locations, Washington's Legislature maintained full jurisdiction for the eight subject matters listed in RCW 37.12.010. *Supra*, n.6.

[8] *Supra*, n.6.

(2) "on their tribal lands or on allotted lands"; *where*

(3) such lands are "held in trust by the United States or subject to a restriction against alienation imposed by the United States."

Reading this language as a whole, it is apparent that Washington's Legislature was focused on a specific subset of lands when it limited its assertion of nonconsensual jurisdiction over Indians within Indian country. The limitation covers only tribal lands and allotted lands within established tribal reservations. To provide greater clarity, the Legislature further specified that these reservation lands must either be held in trust or subject to a restriction on alienation for the limitation to apply.

These distinctions were discussed in *Somday v. Rhay*, 67 Wn.2d 180, 406 P.2d 931 (1965). This Court observed that "tribal lands are lands within the boundaries of an Indian reservation *held in trust by the federal government for the Indian tribe as a community*, and allotted lands are grazing and agricultural lands within a reservation, which are apportioned and distributed in severalty to tribal members, *title to the allotted lands being held in trust and subject to restrictions against alienation for varying periods of time*." *Id.* at 184 (citing 25 U.S.C. §§ 331, *et seq.*, regarding allotted lands and §§ 461, *et seq.*, regarding reservation lands) (emphasis supplied).

All of these elements must be satisfied before the statutory

limitation on the State's asserted jurisdiction may be applied. The Maryhill site meets none of these criteria. The site is not within an "established Indian reservation." It is neither communal tribal land nor is it allotted land held by an individual Indian. The land was not acquired with Congressional direction that it be placed in trust by the United States nor is it subject to a restriction against alienation. The land is owned in fee by the federal government and managed by the federal government to provide several tribes with access to the Columbia River where they exercise *off-reservation* treaty fishing rights at their *off-reservation* usual and accustomed fishing places.

C. Case Law Confirms The Jurisdictional Limitation of RCW 37.12.010 Applies Only To Certain Lands Within An Established Indian Reservation.

In *State v. Cooper*, 130 Wn.2d 770, 928 P.2d 406, 409 (1996), this Court confirmed that the statutory limitation on the State's assertion of nonconsensual jurisdiction in RCW 37.12.010 applies only *within* an established Indian reservation, *and* then only with respect to communal tribal lands or an individual Indian allotment *provided* that they are either held in trust or subject to a restriction against alienation. *Id.* at 777.

The defendant in *Cooper* was convicted of molesting a child on Indian allotment property that was held in trust by the U.S. government but located outside the exterior boundaries of the Nooksack Reservation.

Id. at 772. The defendant and the victim were both members of the Nooksack Tribe — a tribe that had not asked the State to assume criminal jurisdiction on its reservation. *Id.* at 772, 775. Accordingly, it was necessary to determine whether the crime had been committed upon land over which the State had assumed nonconsensual criminal jurisdiction under RCW 37.12.010. Cooper claimed the State lacked criminal jurisdiction over him based upon the jurisdictional limitation set forth in RCW 37.12.010. The Court rejected his claim, concluding that the statutory limitation did not apply because the allotment land was outside the boundaries of the Nooksack Reservation. It was not sufficient that the allotment land was held in trust by the United States.[9] *Cooper*, 130 Wn.2d at 775-78. The Court explained:

> [W]ashington assumed full nonconsensual civil and criminal jurisdiction over *all Indian country outside established Indian reservations.* Allotted or trust lands are not excluded from full nonconsensual state jurisdiction unless they are "within an established Indian reservation."

Id. (quoting RCW 37.12.010) (emphasis added).

The *Cooper* opinion also quoted from *Washington v. Confederated Bands & Tribes of the Yakima Indian Nation*, 439 U.S. 463, 475, 99 S. Ct.

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[9] Footnote 1 of the *Cooper* opinion explained allotted lands may be held by the federal government in trust for an individual Indian — a trust parcel — or subjected to a restriction against alienation, and that such parcels may be located outside the formal boundaries of an established Indian reservation. *Cooper*, 130 Wn.2d at 772, n.1. *See also State v. Cooper*, 81 Wn. App. 36, 40 n.5, 912 P.2d 1075 (1996), describing in further detail the genesis of Indian allotments.

740, 58 L. Ed. 2d 740 (1979), where the Supreme Court described the State's jurisdictional exclusion as applying only to certain lands *within* established Indian reservations. *See Cooper*, 130 Wn.2d at 776.

Relying upon *State v. Sohappy*, 110 Wn.2d 907, 757 P.2d 509 (1988), Cooper argued that when land is held in trust by the United States for the benefit of Indians it is functionally an established Indian reservation. The *Cooper* decision rejected that argument because it ran counter to the clear requirement set forth in RCW 37.12.010:

> As the State points out, Cooper's interpretation would render the phrase "within an established Indian reservation" totally meaningless. If the term "reservation" in RCW 37.12.010 included all Indian lands *outside the formal boundaries of established reservations,* then the exception would swallow the rule.

Cooper, 130 Wn.2d at 778 (emphasis added).

State v. Boyd, 109 Wn. App. 244, 34 P.3d 912 (2001), examined the corollary to *Cooper* — a crime arising *within* an established Indian reservation, but on lands that do not meet the other statutory criteria prescribed by RCW 37.12.010. The Court of Appeals concluded that the State's jurisdiction over Indian crimes within an established Indian reservation is not limited unless the land on which a crime occurs is also one of the types described by the terms of the statute. *Id.* at 252.

In *Boyd*, Indian defendants attacked campers at a campground

within the Colville Indian Reservation, but on land that had been condemned by the Federal Bureau of Reclamation as part of the Grand Coulee Dam project. *Id.*, 109 Wn. App. at 246-47. The trial court found that although the lands were within a reservation boundary (the first element of the jurisdictional exception in RCW 37.12.010), they were not either tribal lands or an allotted land parcel held by an individual Indian, and they were not held in trust or subject to any restriction on alienation (the second and third elements of the jurisdictional limitation in RCW 37.12.010). *Id.* at 248. The Court of Appeals affirmed the convictions, concluding that the State has asserted jurisdiction over the criminal actions of an Indian within an established reservation unless the land on which the crime occurred also satisfies the second and third elements set forth in RCW 37.12.010. *Id.* at 252. *Accord State v. Flett*, 40 Wn. App. 277, 699 P.2d 774 (1985) (State had criminal jurisdiction over an Indian who committed rape on land within a reservation that was not held in trust by the federal government or restricted from alienation).

Similar to Mr. Jim in this case, the defendants in *Boyd* attempted to avoid State jurisdiction by arguing that the site was under a "constructive trust or constructive restriction on alienation." *Boyd*, 109 Wn. App. at 252. In *Boyd*, the federally owned fee land at issue was managed under a cooperative management agreement between the federal government and

the Colville Confederated Tribes. The Court rejected the "constructive trust" argument, holding that any agreement regarding the management of the land did not change the fact that it was owned in fee by the federal government, rather than being held in trust as specified in RCW 37.12.010. *Id.* at 252-53.

The same is true here. Nothing in the congressional legislation funding the development of Treaty Fishing Access Sites specified that the land was to be placed in trust. *See* Pub. L. No. 100-581, § 401(a). Nor does the legislation specify that the lands are to be managed exclusively for the benefit of any tribe. *Id.*[10] Congress authorized development of these upland parcels as replacements for traditional off-reservation fishing access spots that had been inundated by Columbia River dams. *Id.* None of those inundated access sites were within any of the four tribes' communal Indian reservations. Prior to purchase by the federal government, these lands were fee lands fully subject to State jurisdiction. The federal agencies continue to hold these lands in fee, not with any formal declaration of trust status.[11] The federal development of fee owned lands as mitigation for the inundation of fee owned access sites utilized by

[10] The exclusive use of this land is established by federal regulations promulgated by the Bureau of Indian Affairs, but the rules do not state that the BIA holds the sites in trust for any of the multiple tribes allowed to use them. *See* 25 C.F.R. pt. 247 (treaty fishing access sites); pt. 248 (in-lieu sites).

[11] 25 U.S.C. §§ 465, 467 (2009); 25 C.F.R. pt. 151.

multiple tribes with off-reservation fishing rights does not constitute the establishment of an Indian reservation, nor are the lands communal tribal lands held in trust for a tribe as prescribed in RCW 37.12.010. Congressional reports expressly recognize state and local jurisdiction at these federally owned sites.[12]

The Court of Appeals in this case acknowledged that the Maryhill site "is not on an Indian reservation" and "not on Yakama reservation land." *State v. Jim*, 156 Wn. App. at 40, 43. Nevertheless, the appellate court concluded that the land is part of Indian country, and "is entitled to reservation status." *Id.* at 43. This conclusion fundamentally conflicts with the plain language of RCW 37.12.010.

As prescribed by the text of RCW 37.12.010, and as recognized in *Cooper*, the State has not limited its assertion of jurisdiction over Indian crimes when they occur within Indian country outside the boundaries of an established Indian reservation. Accordingly, the Court of Appeals erred when it concluded the State had no jurisdiction over the criminal activities of Mr. Jim within the Maryhill Treaty Fishing Access Site — an area that the court acknowledged "is not on an Indian reservation." *Id.* at 40.

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[12] *See* Senate Report No. 100-577, at 3935 (1988) ("Although the Secretary of the Army has no law enforcement capability, per se, any violations of state or Federal law must be referred to local or state law enforcement agents.") This report was for H.R. 2677, which was enacted into Pub. L. 100-581, authorizing TFASs, and a copy is attached as Appendix A to Jim's Brief of Petitioner before the Court of Appeals.

In holding that the Maryhill site is "is entitled to reservation status," the Court of Appeals appeared to rely upon the assertion that the site is within "Indian country." *State v. Jim*, 156 Wn App. at 43. That is the very error this Court identified in *Cooper* and rejected. The specific purpose of PL 280 and RCW 37.12.010 is to provide for state criminal jurisdiction over Indians within Indian country. The appellate court's conclusion that the Maryhill site is "Indian country" and thus "entitled to reservation status" for purposes of applying Washington's limitation on its assertion of nonconsensual jurisdiction *within* an "established Indian reservation" allows the exception to swallow the rule. *See Cooper* at 778-79 (observing that while all reservation trust land is Indian country, RCW 37.12.010 does not except all Indian country and reservation trust land from its jurisdictional reach — only discrete portions of reservation land are held back from the State's assertion of jurisdiction).

The Court of Appeals' decision also failed to address the additional requirements of RCW 37.12.010 that further narrow Washington's limitation on its assertion of jurisdiction over Indian crimes within Indian country. As recognized in *Boyd*, the Washington Legislature limited State jurisdiction over Indian crimes within an Indian reservation only where the activities occur on communal tribal land or an individual Indian allotment, and only where such land is held in trust or subject to a restriction on

alienation. *Boyd*, 109 Wn. App. at 252.

Even if the Maryhill site were part of an established Indian reservation, the site is not tribal land or an allotted parcel for an individual Indian. It is not held in trust or subject to any restriction on alienation. The land is owned in fee simple title by the United States government. Accordingly, as was the case in *Boyd*, the land fails to meet the explicit statutory criteria set forth in RCW 37.12.010 and is not excepted from the State's assertion of nonconsensual jurisdiction over Indian crimes.

D. This Court's Prior Decision In *State v. Sohappy* Is Not Controlling In This Case And Should Be Overruled

Mr. Jim relies upon this Court's decision in *State v. Sohappy*, 110 Wn.2d 907, 757 P.2d 509 (1988), arguing that its outcome — no State criminal jurisdiction over Indian crimes committed within a federally owned "in-lieu" fishing access site — should be replicated for all TFASs along the Columbia River, including the Maryhill site.

To the contrary, this Court carefully limited its decision in *Sohappy* to the Cooks Landing site because the Court's decision was based on limited briefing and in reliance upon a federal case with limited application to the construction of a State statute. *Sohappy*, 110 Wn.2d at 909. By its own terms, *Sohappy* was not intended to control any other case that might follow. Furthermore, the holding in *State v. Sohappy*

failed to analyze and apply controlling language in RCW 37.12.010. It effectively has been superseded by the analysis and holdings in *Cooper* and *Boyd* and should be overruled.

1. *State v. Sohappy* failed to consider and apply all of the elements of RCW 37.12.010.

In *Sohappy*, a Yakama tribal member assaulted a police officer at a fishing access site along the Columbia River known as Cooks Landing. *Sohappy*, 110 Wn.2d at 908. Cooks Landing is one of several "in-lieu" sites, which are similar to Treaty Fishing Access Sites, but were created under a different federal statute.[13] Like TFASs, in-lieu sites are off-reservation locations managed by BIA for the benefit of multiple tribes holding off-reservation treaty fishing rights in the area. The *Sohappy* Court stated that Cooks Landing "obviously is not within the original boundaries of the reservation itself described in the [Yakama Nation] 1855 treaty; however, it is a part of a reservation for purposes of application of our state jurisdiction statute." *Id.* at 911.

The conclusion in *Sohappy* that Cooks Landing is part of an

[13] Both in-lieu sites and treaty fishing access sites are federally-owned waterfront properties that replace upland access to off-reservation usual and accustomed fishing places inundated by Columbia River dams. However, these sites were developed pursuant to different pieces of federal legislation. *See* Act of March 2, 1945, Pub. L. 79-14, 59 Stat. 10, 22 (in-lieu sites); Act of Nov. 1, 1988, Pub. L. 100-581, § 401, 102 Stat. 2938, 2944-45 (treaty fishing access sites). The BIA promulgated different rules for each category of site. *See* 25 C.F.R. pt. 247 (treaty fishing access sites); pt. 248 (in-lieu sites). TFASs are generally reserved for four tribes — the Yakama, Warm Springs, Nez Perce, and Umatilla Indian Tribes. 25 C.F.R. § 247.2(b). In-lieu sites are reserved for three of those four tribes, with the Nez Perce omitted from the list. 25 C.F.R. § 248.2.

"established Indian reservation" and thus beyond the State's jurisdiction under RCW 37.12.010 is incorrect because it is inconsistent with the full and plain meaning of the statute. As discussed in Sections B and C above, when the Legislature used the phrase "established Indian reservation" it was referring to the communal tribal land established for a tribe. Land owned and managed by the federal government to provide multiple tribes with off-reservation fishing access is not equivalent to the established tribal reservation homelands identified in RCW 37.12.010. [14]

A complete analysis of RCW 37.12.010 also would have required an inquiry into the trust or restricted status of any reservation land. These characteristics are part of the legislative compromise in the assertion of nonconsensual jurisdiction over reservation lands within Indian country. They help predict whether tribal authority within an established reservation is likely to be asserted over the actions of a member Indian. Because the analysis in *Sohappy* failed to consider these characteristics it was erroneously decided and should not control the result in this case.

2. *State v. Sohappy* erroneously relied upon a federal court decision with no bearing on the State statute at issue.

The *Sohappy* opinion relied upon a federal case analyzing the conceptually and legally distinct question of whether a fishing site

[14] Each of the three tribes having traditional fishing rights at the in-lieu sites have separate, established Indian reservations in Washington and Oregon, and the Cooks Landing site is not within any of those three established Indian reservations.

constituted "Indian country" for purposes of *federal* jurisdiction under 16 U.S.C. § 3372. *Id.* at 910-11 (citing *United States v. Sohappy*, 770 F.2d 816 (9th Cir. 1985), *cert. denied*, 477 U.S. 906, 106 S. Ct. 3278, 91 L. Ed. 2d 568 (1986)). However, as this Court later recognized in *Cooper*, it is not appropriate to utilize federal conceptions of "Indian country" to construe a portion of a State statute placing a limitation on the otherwise broad assertion of State jurisdiction over all of Indian country. *Cooper*, 130 Wn.2d at 778. Accordingly, the proper question was not whether Indian country existed at Cooks landing because it might be viewed generally as a "reservation" for federal jurisdictional purposes. The proper question was whether a fishing access site acquired in fee by the federal government and managed to provide three tribes with off-reservation fishing access is the kind of on-reservation property that Washington's Legislature excepted from its assertion of Public Law 280 jurisdiction over Indian country. Because Cooks landing was not tribal trust or restricted allotment land within any tribe's established reservation, the limits on State jurisdiction within RCW 37.12.010 should not have been applied. *See also State v. Jim*, 37 P.3d 241 (Or. Ct. App. 2002) (refusing to apply federal conceptions of a "reservation" when construing Oregon's PL 280 statute). The same is true here.

The errors contained within the *Sohappy* analysis are harmful

because they continue to cause confusion by courts and litigants. In the present case, two of the lower courts followed *Sohappy* and misapplied RCW 37.12.010 to deny the State's jurisdiction over off-reservation criminal conduct of Indians. *Sohappy*'s narrow limitation of its holding is insufficient to protect future courts from its erroneous analysis. To prevent *Sohappy*'s erroneous analysis from causing further harm, the decision should be overruled.

V. CONCLUSION

The Court of Appeals should be reversed with direction to remand this case to the district court for a trial on the merits. To the extent *State v. Sohappy*, 110 Wn.2d 907, 757 P.2d 509 (1988), holds that a tribal fishing site owned in fee by the United States for the use of multiple tribes constitutes an "established Indian reservation" outside the State's jurisdiction under RCW 37.12.010, that decision should be overruled.

RESPECTFULLY SUBMITTED this 1st day of February, 2011.

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Appendix 1

RCW 37.12.010
Assumption of criminal and civil jurisdiction by state.

The state of Washington hereby obligates and binds itself to assume criminal and civil jurisdiction over Indians and Indian territory, reservations, country, and lands within this state in accordance with the consent of the United States given by the act of August 15, 1953 (Public Law 280, 83rd Congress, 1st Session), but such assumption of jurisdiction shall not apply to Indians when on their tribal lands or allotted lands within an established Indian reservation and held in trust by the United States or subject to a restriction against alienation imposed by the United States, unless the provisions of RCW 37.12.021 have been invoked, except for the following:

(1) Compulsory school attendance;

(2) Public assistance;

(3) Domestic relations;

(4) Mental illness;

(5) Juvenile delinquency;

(6) Adoption proceedings;

(7) Dependent children; and

(8) Operation of motor vehicles upon the public streets, alleys, roads and highways: PROVIDED FURTHER, That Indian tribes that petitioned for, were granted and became subject to state jurisdiction pursuant to this chapter on or before March 13, 1963 shall remain subject to state civil and criminal jurisdiction as if *chapter 36, Laws of 1963 had not been enacted.

[1963 c 36 § 1; 1957 c 240 § 1.]

Notes:

***Reviser's note:** Chapter 36, Laws of 1963, which became effective on March 13, 1963, amended RCW 37.12.010, 37.12.030, 37.12.040, and 37.12.060, repealed RCW 37.12.020, and enacted a new section codified herein as RCW 37.12.021.